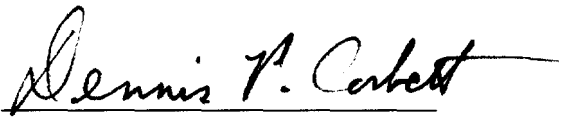


CONCLUSION

For the reasons set out above, HFCP II requests that F. Warren Hellman, Tully M. Friedman, John L. Bunce, Jr., and Mitchell R. Cohen be found qualified to hold licenses issued by the Commission and that their names be removed from the Wireless Bureau's June 25, 1997 list.

Respectfully submitted,

HELLMAN & FRIEDMAN CAPITAL
PARTNERS II, L.P.

By: 
Steven A. Lerman
Dennis P. Corbett

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809

July 23, 1997

Its Attorneys

ATTACHMENT 1

DECLARATION

Mitchell R. Cohen hereby declares as follows:

1. I am a General Partner of Hellman & Friedman ("H&F"). I am 33 years old. I graduated from the McIntire School of Commerce at the University of Virginia in 1986 and joined H&F in 1989 after working as an Associate in the Merchant Banking Department and the Office of the Chairman at Shearson Lehman Hutton Inc. I am a Director of Advanstar Communications, Western Wireless Corporation, and MobileMedia Corporation ("MobileMedia").

2. H&F pools substantial amounts of capital from large institutional investors and invests those funds in carefully selected, diverse companies. Over the course of the last ten years, Hellman & Friedman has created three separate investment funds — Hellman & Friedman Capital Partners ("HFCP I") and two affiliated limited partnerships (consisting of committed capital of approximately \$165 million); HFCP II and two affiliated limited partnerships (with approximately \$875 million in committed capital) and Hellman & Friedman Capital Partners III, L.P. and two affiliated limited partnerships ("HFCP III") (approximately \$1.5 billion in committed capital). HFCP I, II, and III share some, but not all of the same institutional investors. These investors include the retirement systems of California, New York, and Virginia, the pension funds of AT&T, IBM, and NYNEX; the endowments of Yale and Stanford Universities; and the Ford Foundation.

3. Hellman & Friedman typically seeks investment opportunities which are greater than \$50 million in businesses with talented management teams and attractive operating fundamentals. Hellman & Friedman normally oversees its investments through participation on a parent company's Board of Directors. Given the breadth of its investments and given its basic investment philosophy, Hellman & Friedman is typically not involved in the day-to-day management of the companies in which it has invested.

4. Wide-ranging industries in which the three H&F funds have invested include media, entertainment, money management, insurance, and basic infrastructure in developing countries, as well as telecommunications. With respect to telecommunications, HFCP II and affiliates have over time invested over \$169,000,000 in MobileMedia. HFCP II and affiliates have over time invested approximately \$137.5 million in Western Wireless Corporation ("Western"), \$75 million of which was used to fund Western's PCS auction commitments, and HFCP I and II have over time invested nearly \$83 million in Falcon Holding Group, L.P. and affiliated companies ("Falcon"), a cable television multiple systems operator. HFCP III and affiliates have invested \$345,000 to date in NetSat 28 Company, L.L.C., a start-up Ka-band satellite company. In addition, HFCP III has entered into a joint venture with Cook Inlet Region to form Cook Inlet Communications Ventures looking toward the acquisition of media and communications-related entities.

5. I did not in any way participate in, condone, or otherwise authorize the wrongdoing involving MobileMedia and disclosed in the October 15, 1996 Report of Latham & Watkins and Wiley, Rein & Fielding ("Counsel's Report") to the Commission. Until August 19, 1996 or a date shortly thereafter, I had no knowledge of the wrongdoing disclosed in the Counsel's Report. When I learned of the wrongdoing, as a Director of MobileMedia, I concurred in the decision to authorize a thorough investigation of the wrongdoing by counsel and complete disclosure to the Federal Communications Commission. I also concurred in the decision to implement comprehensive remedial measures.

6. I am unaware of any intention on the part of MobileMedia or its counsel to misrepresent facts or mislead or deceive, whether through lack of candor or otherwise, the Commission in any way in the Counsel's Report.

I hereby declare under penalty of perjury that the foregoing is true and correct.



Mitchell R. Cohen

Date: July 22, 1997

ATTACHMENT 2

DECLARATION

F. Warren Hellman hereby declares as follows:

1. I am a General Partner of Hellman & Friedman ("H&F"), an investment firm based in San Francisco, California and founded in 1984.
2. I am 62 years old. I graduated from the University of California at Berkeley in 1955 and the Harvard Business School in 1959. In addition to MobileMedia Corporation ("MobileMedia"), I am currently a Director of, among other companies, Young and Rubicam, Inc., Levi Strauss & Co., APL Ltd., and Franklin Resources, Inc., and a number of private and venture capital-backed companies. I am a trustee of The Brookings Institution and The San Francisco Foundation, the Chairman of the Committee on JOBS, and a member of the Board of Directors of Children Now and the University of California Business School Advisory Committee.
3. I did not in any way participate in, condone, or otherwise authorize the wrongdoing involving MobileMedia and disclosed in the October 15, 1996 Report of Latham & Watkins and Wiley, Rein & Fielding ("Counsel's Report") to the Commission. Until August 19, 1996 or a date shortly thereafter, I had no knowledge of the wrongdoing disclosed in the Counsel's Report. When I learned of the wrongdoing, as a Director of MobileMedia, I concurred in the decision to authorize a thorough investigation of the wrongdoing by counsel and complete disclosure to the Federal Communications Commission. I also concurred in the decision to implement comprehensive remedial measures.
4. I am unaware of any intention on the part of MobileMedia or its counsel to misrepresent facts or mislead or deceive, whether through lack of candor or otherwise, the Commission in any way in the Counsel's Report.

I hereby declare under penalty of perjury that the foregoing is true and correct.


F. Warren Hellman

Date: July 22, 1997

ATTACHMENT 3

DECLARATION

Tully M. Friedman hereby declares as follows:

1. I was formerly a General Partner of Hellman & Friedman ("H&F"). I resigned that position as of March 31, 1997, for reasons unrelated to MobileMedia Corporation ("MobileMedia"), to begin Tully M. Friedman & Co., L.L.C., an investment company. I resigned the Board of Directors of MobileMedia effective March 11, 1997. I still have a financial stake in various Hellman & Friedman investments, including Hellman & Friedman Capital Partners II, L.P.

2. I am 55 years old. I graduated from Stanford University in 1962 and Harvard Law School in 1965. I am on the Board of Directors of APL Ltd., Levi Strauss & Co., Mattel, Inc. and McKesson Corporation. I am a member of the Executive Committee and a Trustee of the American Enterprise Institute and a Director of the Stanford Management Company. I am also a former President of the San Francisco Opera Association and a former Chairman of Mount Zion Hospital and Medical Center.

3. I did not in any way participate in, condone, or otherwise authorize the wrongdoing involving MobileMedia and disclosed in the October 15, 1996 Report of Latham & Watkins and Wiley, Rein & Fielding ("Counsel's Report") to the Commission. Until August 19, 1996 or a date shortly thereafter, I had no knowledge of the wrongdoing disclosed in the Counsel's Report. When I learned of the wrongdoing, as a Director of MobileMedia, I concurred in the decision to authorize a thorough investigation of the wrongdoing by counsel and complete disclosure to the Federal Communications Commission. I also concurred in the decision to implement comprehensive remedial measures.

4. I am unaware of any intention on the part of MobileMedia or its counsel to misrepresent facts or mislead or deceive, whether through lack of candor or otherwise, the Commission in any way in the Counsel's Report.

I hereby declare under penalty of perjury that the foregoing is true and correct.


Tully M. Friedman

Date: July 25, 1997

ATTACHMENT 4

DECLARATION

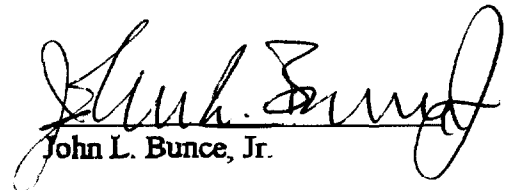
John L. Bunce, Jr. hereby declares as follows:

1. I am 38 years old. I graduated from Stanford University in 1980 and the Harvard Business School in 1984. In addition to MobileMedia Corporation ("MobileMedia"), I am a Director of, among other companies, Young & Rubicam, Inc., Western Wireless Corporation, and Falcon International Communications LLC, and a member of the Board of Representatives of Falcon Holding Group, L.P.

2. I did not in any way participate in, condone, or otherwise authorize the wrongdoing involving MobileMedia and disclosed in the October 15, 1996 Report of Latham & Watkins and Wiley, Rein & Fielding ("Counsel's Report") to the Commission. Until August 19, 1996 or a date shortly thereafter, I had no knowledge of the wrongdoing disclosed in the Counsel's Report. When I learned of the wrongdoing, as a Director of MobileMedia, I concurred in the decision to authorize a thorough investigation of the wrongdoing by counsel and complete disclosure to the Federal Communications Commission. I also concurred in the decision to implement comprehensive remedial measures.

3. I am unaware of any intention on the part of MobileMedia or its counsel to misrepresent facts or mislead or deceive, whether through lack of candor or otherwise, the Commission in any way in the Counsel's Report.

I hereby declare under penalty of perjury that the foregoing is true and correct.


John L. Bunce, Jr.

Date: July 22, 1997

ATTACHMENT 5

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MOBILEMEDIA CORPORATION, et al.) WT Docket No. 97-115
)
Applicant for Authorizations)
and Licensee of Certain)
Stations in Various Services)

To: The Honorable Joseph Chachkin

MOTION TO DELETE ISSUE 14(b)

MOBILEMEDIA CORPORATION, et. al.

Alan Y. Naftalin
Arthur B. Goodkind
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

May 21, 1997

TABLE OF CONTENTS

	Page
SUMMARY	3
I. BACKGROUND: THE COMPANY'S INVESTIGATION AND REPORTS TO THE COMMISSION	8
II. THERE IS NO FACTUAL BASIS FOR THE CONCLUSIONS UNDERLYING PARAGRAPH 14 (b)	12
A. THE COUNSEL'S REPORT IDENTIFIED MR. WITSAMAN AND REPEATEDLY DISCLOSED HIS KNOWLEDGE OF THE WRONGDOING	13
B. THE SOLE PURPOSE OF THE COUNSEL'S REPORT WAS TO PROVIDE COMPLETE AND FULLY CANDID DISCLOSURE TO THE COMMISSION. THERE IS NO BASIS FOR SUGGESTING THAT ITS INTENT WAS TO MISLEAD.	20
III. CONCLUSION	24
DECLARATION OF ERIC L. BERNTHAL	
DECLARATION OF ROBERT L. PETTIT	
DECLARATION OF RICHARD E. WILEY	
DECLARATION OF CHRISTOPHER D. CERF	

In the Matter of)
)
MOBILEMEDIA CORPORATION, et al.) WT Docket No. 97-115
)
Applicant for Authorizations)
and Licensee of Certain)
Stations in Various Services)

147 C.F.R. § 1.229 (1996). The issue in paragraph 14(b) would require that the Company's outside counsel present testimony concerning their role in preparing and filing a key report in this proceeding. The Company has therefore engaged undersigned special counsel to deal with these matters. Undersigned counsel were engaged on May 9, 1997 and are filing this motion as soon as possible thereafter. The due date for this motion under Section 1.229 of the Rules is May 27, 1997.

14(b) of the Hearing Designation Order² in the above-referenced proceeding.³

As we show in this Motion and in the attached Declarations of counsel, inclusion of the issue was based on readily demonstrable mistakes of fact and on a misunderstanding of two sentences included in one of a series of massive disclosure filings by the Company. Unless corrected, these mistakes and misunderstandings will have very serious consequences. They result in a hearing issue that wrongly calls into question the integrity of the very MobileMedia personnel, and particularly

²Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124 (released April 8, 1997) ("HDO"). Notwithstanding the procedures outlined in Section 1.229 of the Commission's rules, the HDO specifies that any motions to delete be certified by the Presiding Officer to the Commission for resolution. Consequently, the Company hereby requests that this motion be promptly certified in accordance with the HDO. Moreover, given that testimony is due to begin in this case on June 10, MobileMedia respectfully requests that this motion be given expedited consideration.

³Now pending before the Commission is an appeal of the Presiding Judge's denial of an "Emergency Motion for Special Relief and Stay of Proceedings Regarding MobileMedia Corporation" which had sought a stay of the hearing so that the Company could avail itself of the process afforded by the Commission's decision in Second Thursday Corp., 22 F.C.C. 2d 515 (1970). The motion had been supported by the Wireless Telecommunications Bureau, as is the currently pending appeal.

counsel, who have voluntarily and completely disclosed extremely serious wrongdoing to the Commission and who fully cooperated with the Commission's staff during many months of investigation.⁴

SUMMARY

I

The hearing issue designated in paragraph 14(b) of the HDO is based wholly on mistakes of fact and a misunderstanding of the Company's October 15, 1996 Counsel's Report to the Commission.⁵ That Counsel's Report had voluntarily provided the Commission with detailed information concerning a very large number of false application filings by the Company. The HDO's errors with respect to the Counsel's Report are as follows:

⁴The scope of the issue and its application to the actions of the Company's counsel has been affirmed by the Commission in its May 5, 1997 order denying the "Motion for Clarification or Modification of Issue" filed by the Wireless Telecommunication Bureau. Order, FCC 97-152. Neither the Company nor its counsel participated in the Bureau's Motion or had been aware in advance of the Bureau's decision to file it until immediately prior to the filing.

⁵Factual Report Regarding Regulatory Compliance Issues, filed with the Wireless Telecommunications Bureau on October 15, 1996 (herein, "Counsel's Report").

(1) Paragraph 3 of the HDO states that the Counsel's Report did not disclose that an "employee," who was described in the report as having been aware of the illegal practices and who had questioned the propriety of the false filings with the Company's then Chief Operating Officer, was himself a corporate officer. This HDO finding is clearly based on an assumption that the employee referred to in the portion of the Counsel's Report cited in HDO paragraph 3 was Mark Witsaman, the Company's Senior Vice-President/Chief Technology Officer. In fact, as shown conclusively in this motion, the reference in question was not to Mr. Witsaman but to a different employee, who was not an officer. This HDO non-disclosure finding was thus based on a clear mistake of fact.

(2) HDO paragraphs 3 and 10 state or imply that the October 15 Counsel's Report failed to disclose Mr. Witsaman's identity as a corporate officer and that Mr. Witsaman had knowledge of the false application filings at the time they occurred. Both conclusions are mistaken, because the October 15 Counsel's Report did explicitly and repeatedly report each of these matters. Not only did the Report explicitly include Mr. Witsaman's name and corporate position, but his knowledge of the false application

filing was shown in four separate documents included in the report as Appendices. The HDO's contrary assertion is thus based on a less than complete reading of the Report. Moreover, Mr. Witsaman's knowledge and, indeed, his continued employment by the Company were the subjects of repeated subsequent discussions between counsel for the Company and Bureau staff and were dealt with explicitly in two further written submissions to the Bureau.

(3) Based on Mr. Witsaman's position as an officer and knowledge that wrongdoing had occurred, the HDO states that the Counsel's report misrepresented facts or lacked candor in stating that "none of the members of senior management involved in the derelictions -- either directly or as a matter of responsibility -- remain employed by the Company" and that "other lower-level employees [were not] disciplined simply for their awareness of the practice." But what the HDO discloses in its characterization of these statements is a misunderstanding of the meaning assigned to the terms in question. While the precise language used could arguably have been more clear, in the context of the facts about Mr. Witsaman that were included in the Counsel's Report, and particularly in the context of the five-month self-investigation and continuing series of oral and

written submissions to the Wireless Bureau by the Company's counsel, it is both unreasonable and manifestly unfair to characterize the portions of the two sentences quoted above as an attempt to mislead the Commission.

Most simply put, the sentences in question were written at a time when the perpetrator of the wrongdoing and the three persons above him in the corporate hierarchy who were aware or who had been reported to be aware of the false filings were gone from the Company. A decision had been reached that other employees who had only known about the false filings should not be terminated. The two sentences in question might have conveyed this information with greater precision and clarity, but any such unintended lack of clarity or inartful drafting are far from deliberate misrepresentation or lack of candor.

II

It is particularly clear on the facts of this case that there was no intent to mislead. Having discovered extremely serious wrongdoing in its application filings, the Company and its attorneys concluded from the outset that the only conceivable

course of action from that point on would be to conduct a complete investigation and to report to the Commission fully and with absolute candor what had happened, who had been responsible for it, and what remedial steps had been and would be taken to insure that similar events could never occur again. This purpose is again confirmed in the attached Declarations of Richard E. Wiley, Robert L. Pettit and Eric L. Bernthal, counsel for the Company. It is at best bizarre to suggest that the experienced and highly reputable attorneys who conducted the investigation for the Company and who prepared the October 15 Report would have undercut the entire purpose of the Company's extensive voluntary disclosure effort by seeking to mislead the Commission on a subsidiary issue involving a single employee. There was absolutely no motive for anyone to do so and there is no evidence whatsoever that either counsel or the Company had any such intent.

The Paragraph 14(b) issue should accordingly be deleted as having lacked factual basis at the time it was designated.

I. BACKGROUND: THE COMPANY'S INVESTIGATION AND REPORTS TO THE COMMISSION

On September 4, 1996, counsel for MobileMedia met with Michele C. Farquhar, then Chief of the Commission's Wireless Telecommunications Bureau, for the purpose of informing the Bureau that the Company had become aware of significant wrongdoing in the filing of the Company's Forms 489.⁶ Counsel stated that the Company had retained him to investigate the wrongdoing and pledged that the wrongdoing would be fully reported to the Commission and further pledged the Company's complete cooperation with the Commission in establishing responsibility for the wrongdoing. This disclosure by the Company's counsel was made voluntarily at the Company's initiative.

No complaint concerning the improper filing practices had been made to the Commission and no Commission investigation had been commenced. On September 26, 1996, counsel again met with the Chief of the Bureau and members of her staff to describe the essential facts of the investigation known on that date,

⁶See Attached Declaration of Eric L. Bernthal.

including the approximate number of inaccurate Form 489 filings, to report the Company's intent to terminate two employees (Messrs. McVay and Belardi, who were directly responsible for the wrongdoing), and to report that the Company had uncovered additional issues to investigate. Over the course of the next several months, the Company made numerous oral and written submissions to the Commission's staff, submitted many hundreds of pages of documents, made its employees and directors available to the Commission staff, made numerous searches of its files, and routinely waived attorney-client privileges and statutes of limitations -- all for the purpose of giving the Commission the complete and unvarnished facts regarding the admitted wrongdoing.

One of these actions was the submission of the October 15, 1996 Counsel's Report prepared by MobileMedia's counsel, Latham & Watkins and Wiley, Rein & Fielding. The report was the first written summary of the scope and causes of the wrongdoing and the first of a series of written submissions to the Commission. The Counsel's Report, which was well over 150 pages long, consisted of a 28-page narrative summary of counsel's findings and conclusions, 18 exhibits and an appendix cataloging the fraudulently filed applications known to counsel as of the date

of the report.⁷ In a cover letter to the report, the Company's counsel stated:

We will be making our further submissions to you shortly. In the interim, we respectfully request that you advise us of any further questions or issues which are suggested to you by the Report or from our prior discussions. As you know, we are eager to provide you with a complete factual record as quickly as possible.⁸

In numerous subsequent conversations with Bureau staff and consistently in its written communications with the Bureau, counsel for the Company stressed the Company's wish to supply any and all information that the Bureau might deem relevant to the investigation and actively solicited inquiries from the Bureau as to any questions its staff might have about any aspect of the investigation. See, e.g., attached Declarations of Eric L. Bernthal, Robert L. Pettit and Richard E. Wiley. In response to

⁷As recited in the narrative, the investigation that resulted in the report "was conducted by counsel over a seven-week period beginning on August 20, 1996" by a total of "nine attorneys from Latham & Watkins and Wiley, Rein & Fielding." As part of the investigation, "[o]ver twenty interviews were conducted and thousands of documents were reviewed" in three Company offices.

⁸Letter from Eric L. Bernthal to Michelle Farquhar, October 15, 1996, at 1-2.

Commission staff requests and on its own initiative, the Company undertook additional lines of investigation and submitted numerous additional reports and documents⁹ and, to the best of our knowledge, responded affirmatively to every Bureau request for information.

The Company and its counsel believed and continue to believe that the investigation and report had been an exemplary effort. At no point during counsel's extensive discussions with the Commission's staff was any contrary suggestion made. See attached Pettit Declaration. At no point did anyone on the staff

⁹Among many other submissions, these included:

- an October 31, 1996 Memorandum of Law, prepared by outside counsel, which had been requested by the Bureau staff;
- a November 8, 1996 report, prepared by outside counsel and voluntarily submitted by the Company, regarding MobileMedia's nationwide licenses;
- a September 18, 1996 internal report to the Company's Board, prepared by outside counsel, voluntarily submitted by the Company as part of a November 20, 1996 document submission requested by the Bureau staff; and
- a January 31, 1997 letter prepared by outside counsel in response to several specific questions raised by the Bureau staff.

call into question the accuracy of the October 15 Counsel's Report. While designation for hearing on the underlying conduct issues had always been seen as one of the Commission's options given the extent of the underlying misconduct, designation of a misrepresentation/candor issue with respect to the investigation report itself came as a total surprise and shock.

II. THERE IS NO FACTUAL BASIS FOR THE CONCLUSIONS UNDERLYING PARAGRAPH 14(b).

Under consistent Commission precedent, a motion to delete¹⁰ will be granted when designation of the issue appears to have been based on "a misunderstanding of the representations made by" the licensee.¹¹ Likewise, issues are properly deleted when

¹⁰Motions to delete are specifically authorized by the Commission's Rules, which indicate that such motions "shall contain specific allegations of fact sufficient to support the action requested" and that the allegations "shall be supported by affidavits of a person or persons having personal knowledge thereof." 47 C.F.R. § 1.229(d).

¹¹Southern Broadcasting Co., 40 F.C.C. 2d 1109, 1113 (1973) (misrepresentation issue deleted because Review Board had misconstrued the import of statements made in materials submitted by licensee). See also Newsweek Radio Stations, Florida, Inc., 33 R.R. 2d (P&F) 891, 893 (1975) (citations omitted) (deletion of issues proper where the Commission "misconstrued pertinent

(continued...)